

[PROPOSED]

ORDINANCE CONCERNING
THE PROPRIETARY MANAGEMENT OF
THE SANTA MONICA AIRPORT

[November 24, 2014]

The Santa Monica Airport Commission hereby proposes and recommends to the Santa Monica City Council the following draft ordinance for consideration concerning the proprietary management of the Santa Monica Airport.

- WHEREAS, the City is the proprietor of the Santa Monica Airport (the “Airport”);
- WHEREAS, as long as the Airport continues to operate, the City can and should use its proprietary powers to manage the Airport in ways that prevent Airport operations constituting a nuisance or toxic threat to the Airport’s neighbors;
- WHEREAS, the City has been and is still pursuing the reduction, curtailment and/or cessation of Airport operations; but these pursuits neither (i) prevent the City from appropriately using its proprietary powers concerning the Airport, nor (ii) excuse the City for any failure to use its proprietary powers, consistent with its legal obligations, as necessary and reasonable to protect the Airport’s neighbors from the impacts of Airport operations;
- WHEREAS, the City operates the Airport pursuant to a certain agreement with federal authorities made in 1984 (the “1984 Agreement”), which governs the rights and obligations of the parties concerning operation of the Airport until such agreement expires on July 1, 2015;
- WHEREAS, Section 2((b)(i) of the 1984 Agreement provides expressly as follows:

The City [of Santa Monica] has the responsibility to manage the Airport, including the ability to take reasonable action designed to abate the impact[s] ... on surrounding communities, in accordance with the principles of *Santa Monica Airport Association v. City of Santa Monica*, [481] F. Supp. 927 (C.D. Cal. 1979), *affirmed*, 659 F.2d 100 (9th Cir. 1980); and *British Airways Board v. Port Authority of New*

York, 558 F.2d 75 (2d Cir. 1977).

- WHEREAS, Section 14 of the 1984 Agreement expressly sets forth the governmental parties' agreement "that it is appropriate for the City to exercise its proprietary authority to adopt restrictions applicable to [the Airport's] users and lessees...."
- WHEREAS, pursuant to 49 United States Code section 47524(d)(3), the 1984 Agreement's existence operates to exempt the Airport from the provisions of the federal Airport Noise and Capacity Act of 1990, such that the City faces relatively few procedural limitations on the exercise of proprietary powers vis-à-vis the Airport's management;
- WHEREAS, the 1979 court opinion in *Santa Monica Airport Association v. City of Santa Monica*, 481 F. Supp. 927, 936-44 (C.D. Cal. 1979) sets forth the legal standards by which the City's exercise of its proprietary powers vis-à-vis the Airport is to be reviewed and judged, and explains that the City's use of its proprietary powers to impose use restrictions must be upheld if (i) such restrictions are rationally related to a legitimate interest, and (ii) the interest being served is a peculiar local concern. *See* 481 F. Supp. at 937;
- WHEREAS, in 2001, following a superior court trial by jury, the operations at the Airport were adjudged to constitute a private nuisance affecting the occupants of homes located east of the Airport and prevailingly downwind of Airport operations;
- WHEREAS, the evidence in the afore-referenced 2001 jury trial indicates that each turbine-powered aircraft at the Airport, when idling, is rated to emit up to 50 pounds per hour of hydrocarbons, which amount was then the equivalent of the emissions that 1,200 average passenger automobiles were then estimated to emit when idling and now the equivalent of many times more automobiles;
- WHEREAS, the number of annual operations of air-polluting aircraft which occur at the Airport have increased significantly since 2001;
- WHEREAS, recently undertaken scientific study indicates that the neighborhood that is located east and downwind (given prevailing winds) of the Airport has among the worst air quality measured in the greater Los Angeles region, even though aircraft operations at the Airport are intermittent rather than constant;

- WHEREAS, scientific research in recent years related to the health impacts of air pollution increasingly focuses on risks associated with ultra-fine particles such as those produced during aircraft engine operations;
- WHEREAS, research indicates that there is a strong, positive correlation between the concentrations of ultra-fine particles and the emission of oxides of nitrogen from aircraft when they are in take-off mode;
- WHEREAS, governmental regulatory agencies and non-governmental organizations (e.g., the International Civil Aviation Organization and others) maintain data and ratings pertaining to the levels of both hydrocarbons and oxides of nitrogen which are estimated to be emitted from aircraft engines in different modes of operations, such as when idling and when in take off modes;
- WHEREAS, such emissions ratings can reasonably be related to each individual aircraft which utilizes the Airport based on ascertainment of the respective engines model and number of engines and from data pertaining to the respective ratings of the performance of different aircraft engines;
- WHEREAS, because of the Airport's layout and its juxtaposition to its neighbors, runway and taxiway operations of highly-polluting aircraft takes place at the Airport in substantially closer proximity to personal residences than can be found at any other airport in the nation; and
- WHEREAS, given that highly-polluting aircraft idle and operate in extraordinarily close proximity to the neighbors' homes, the Airport operations are inconsistent with the City's longstanding efforts to promote environmental sustainability throughout the City's municipal and proprietary operations and throughout the community.

NOW, THEREFORE, IN LIGHT OF THE FOREGOING, THE CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

- 1) Effective beginning on the dates indicated below, no aircraft may operate at the Santa Monica Airport if, excluding any auxiliary engine(s), it bears an engine that is, or bears engines that cumulatively are, rated to exceed the emissions ratings use restrictions that are specified below.
 - (a) Effective April 1, 2015, no aircraft may operate at the Santa Monica

Airport if, excluding any auxiliary engine(s), it bears an engine that is, or bears engines that cumulatively are, rated to emit:

- i. forty (40) pounds or more per hour in hydrocarbons when in idle mode, or
- ii. two hundred (200) pounds or more per hour in oxides of nitrogen when in take off mode.

(b) Effective January 1, 2016, no aircraft may operate at the Santa Monica Airport if, excluding any auxiliary engine(s), it bears an engine that is, or bears engines that cumulatively are, rated to emit:

- i. thirty (30) pounds or more per hour in hydrocarbons when in idle mode, or
- ii. one hundred fifty (150) pounds or more per hour in oxides of nitrogen when in take off mode.

(c) Effective July 1, 2016, no aircraft may operate at the Santa Monica Airport if, excluding any auxiliary engine(s), it bears an engine that is, or bears engines that cumulatively are, rated to emit:

- i. twenty (20) pounds or more per hour in hydrocarbons when in idle mode, or
- ii. one hundred (100) pounds or more per hour in oxides of nitrogen when in take off mode.

(d) Effective January 1, 2017, no aircraft may operate at the Santa Monica Airport if, excluding any auxiliary engine(s), it bears an engine that is, or bears engines that cumulatively are, rated to emit:

- iii. ten (10) pounds or more per hour in hydrocarbons when in idle mode, or
- iv. eighty (80) pounds or more per hour in oxides of nitrogen when in take off mode.

2) Effective January 1, 2018, and again effective each successive January 1st thereafter, the emissions rating use restrictions immediately thereto in effect pursuant to this ordinance, expressed in pounds of constituent per hour, shall be further reduced by five per cent (5%); provided, however, that the Santa Monica Airport Commission may, by a majority vote of its members following notice and a public hearing occurring no less than three months before such scheduled change in the emissions ratings use restrictions, and hereby is empowered to, forgo the

prospective operation of this provision in any given following year if the Commission finds that such forbearance is consistent with maintaining desirable levels and types of airport operations after due consideration for the effects of aircraft operations on the airport's neighbors.

- 3) If the implementation of any emissions ratings use restriction set forth in this ordinance is either (a) delayed due to any intergovernmental approval and review processes, or (b) found to be conflict with any federal grant assurance that binds the City to forbearance, then the application of the respective use restriction shall be deferred until such time as the intergovernmental process concludes and any conflicting grant assurance expires, whereupon such ordained emissions rating use restrictions set forth in this ordinance shall thereupon become effective as soon as reasonable public notice thereof is provided.
- 4) In order to enforce compliance with the proprietary restrictions on use of the Airport which are established by and pursuant to this ordinance, the Santa Monica Airport Commission (i) shall establish no later than March 1, 2015, (ii) may revise from time to time, and (iii) shall cause to be publicized for enforcement, special user fees chargeable to any person who violates any emissions ratings use restrictions established pursuant to this ordinance. Such special user fees may, at the discretion of the Santa Monica Airport Commission, substantially exceed user fees established for compliant use of the Airport, and be progressive with respect to repeat violations. In addition, the Santa Monica Airport Commission shall investigate and pursue any rights that the City may have as the Airport's proprietor to exclude from using the Airport, as trespassers, any repeat violators of the emissions ratings use restrictions established pursuant to this ordinance.
- 5) The City's airport director and staff are hereby directed to publicize, implement and enforce both the emissions ratings use restrictions set forth in this ordinance and, when promulgated, the related special user fees established from time to time by the Santa Monica Airport Commission, and to put in place the most efficacious and economical means of ascertaining compliance with and enforcing the emissions ratings use restrictions established pursuant to this ordinance. The identification of an individual aircraft's propulsion engine(s), fuel type and the emissions ratings of each such engine shall be determined with reference to, among other sources, civil registration numbers and generally available data publicized by the International Civil Aviation Organization or such other analogous data source(s) as the Santa

Monica Airport Commission may approve from time to time for use.

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